



## **Legislative changes to GRAMA in 2015**

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The Utah State Legislature made a number of changes to the Government Records and Management Act (GRAMA) during the 2015 session. In addition to the designation of two new private or protected records, the Legislature substantially changed the appeals process. Changes to the appeals process further affected changes to the applicability of GRAMA to political subdivisions and to the membership of the State Records Committee. A summary of the changes is provided herein.

### **ADDITIONAL PRIVATE RECORDS**

House Bill 340, which allows individuals who are 16 or 17 to register to vote, also provides for information about them to be classified as private.

Senate Bill 159, which requires credit history reports and criminal background checks for any public employee who “applies for or holds a public funds position,” also provides that these background checks and credit reports are private records.

**Utah Code Section 63G-2-302(1)** “The following records are private: ...

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101(4)(f) or 20A-1-101.1(5)(a)...

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

## ADDITIONAL PROTECTED RECORDS

House Bill 184, which amended the Utah Victims Restitution Act, provides a protected classification for records that document a victim's application for, denial of, and receipt of benefits under this act.

**Utah Code Section 63G-2-305** "The following records are protected: ...

(65) any record in the custody of the Utah Office for Victim's for Crime relating to a victim, including: (a) a victim's application for benefits; (b) a victim's receipt or denial of benefits; and (c) any administrative notes or records made or created for the purpose of, or used to evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund.

## AMENDMENTS TO THE APPEALS PROCESS

Amendments to the appeals process are extensive. They completely change the nature of local appeals boards, and make changes to timelines and appeal rights. In order to better articulate these changes the Legislature added new definitions that apply specifically to Part Four, Appeals (although they appear in the law at the end of Part Three, Classification).

### Definitions:

**Access denial** means either the partial or complete denial of access to records. Access denial can be either a written notice of denial or it can be a governmental entity's failure to provide records within specified time frames. These two methods of denial are described in Utah Code Sections 63G-2-205 and, and 63G-2-204(8), respectively.

**Appellate affirmation** means a decision to support or uphold an earlier decision to deny access. This decision can be a chief administrative officer's decision to affirm the earlier denial of a records officer, or it can be the decision of either the State Records Committee or a local appeals board to affirm a chief administrative officer's earlier denial of access to records.

**Interested party** means a person other than the requester who is aggrieved by access denial. It means a person, not the requester, who is injured or offended by the access denial decision and chooses to exercise a right of appeal.

**Local appeals board** means an appeals board established by a political subdivision to hear appeals of the access denial by the political subdivision's chief administrative officer.

**Record request** means a request for records under GRAMA, commonly referred to as a GRAMA request.

**Records committee appellant** is a requester or interested party who appeals to the State Records Committee the access denial of a chief administrative officer or local appeals board. A records committee appellant can also be a political subdivision that appeals the decision of its local appeals board.

**Requester** is a person who submits a records request to a governmental entity.

**Utah Code Section 63G-2-400.5 Definitions.**

“As used in this part:

- (1) “Access denial” means a governmental entity’s denial, under Subsection 63G-2-204(8) or Section 63G-2-205, in whole or in part of a record request.
- (2) “Appellate affirmation: means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.
- (3) “Interested party” means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.
- (4) “Local appeals board” means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).
- (5) “Record request” means a request for a record under Section 63G-2-204.
- (6) “Records committee appellant” means :
  - (a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee, or
  - (b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.
- (7) “Requester” means a person who submits a record request to a governmental entity.”

**Appeal to a chief administrative officer:**

Whereas prior to legislative changes any aggrieved person could appeal the “determination” within 30 days, the law now clarifies certain details. Instead of “any aggrieved person,” a “requester or interested party” may appeal. The 30-day time limit for appeal is clarified to mean no later than 30 days after the date of a notice of denial or 30 days after the governmental entity failed to provide records within the time allowed for response. Failure to make a decision within the time frame is a decision to deny access. The same concepts apply to an appeal of a governmental entity’s claim of extraordinary circumstances. Though not

specifically stated in the updated law, appeals can also be made for the unreasonable denial of a request for a fee waiver.

**Utah Code Section 63G-2-401 Appeal to chief administrative officer.**

- (5) (a) The chief administrative officer shall make a decision on the appeal within
- (i) five business days after the chief administrative officer's receipt of the notice of appeal; or
  - (ii) 12 days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.
- (b) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.

**Appealing the decision of a chief administrative officer:**

If the chief administrative officer's decision is to affirm access denial, the requester may appeal to the next level. If affirmation of denial was from a political subdivision with a local appeals board, then the requester can appeal only to the local board. If from any other governmental entity the requester or interested party may appeal to either the State Records Committee or in district court.

**Utah Code Section 63G-2-402. Appealing a decision of a chief administrative officer.**

- (1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may
  - (a) (i) appeal the decision to the records committee as provided in section 63G-2-403; or
  - (ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or
  - (b) appeal the decision to the local appeals board if;
    - (i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and
    - (ii) the political subdivision has established a local appeals board.
- (2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.
- (3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Prior to changes the legal language was that “any person aggrieved by a decision” could appeal to the State Records Committee or in district court. Note that, as stated, the updated law states that either the requester or an interested party may appeal to the State Records Committee or in district court, but only the requester can appeal to a local appeals board.

### **Appeal to the records committee.**

Instead of “an aggrieved person” the amended law entitles a “records committee appellant” to appeal access denial to the State Records Committee. Referring to the definitions, an appellant can be a requester or interested party, or it can be a political subdivision seeking to overturn the decision of its own local appeals board. The records committee appellant must file a notice of appeal with the records committee executive secretary no later than 30 days after the issuance of the decision being appealed. A decision can be either a notice of denial or the default decision of failing to provide records within the allowed time. An extension from 30 to 45 days is allowed if the governmental entity claimed extraordinary circumstances then failed to make a decision.

#### **Utah Code Section 63G-2-403. Appeals to the records committee.**

- (1)(a) A records committee appellant appeals to the records committee by filing a notice of appeal with the executive secretary of the records committee no later than 30 days after the date of issuance of the decision being appealed.
- (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the records committee no later than 45 days after the day on which the record request is made if:
  - (i) the circumstances described in Subsection 63G-20401(1)(b) occur; and
  - (ii) the chief administrative officer fails to make a decision...
- (2) The notice of appeal shall:
  - (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;
  - (b) be accompanied by a copy of the decision being appealed; and
  - (c) state the relief sought.
- (3) The records committee appellant:
  - (a) shall on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:
    - (i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or
    - (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision, and
  - (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

Although, the word appellant is substituted for petitioner, the required procedures for appeal remain the same. The notice of appeal must include the appellant's name, mailing address, and daytime phone number, and must also include a copy of the decision being appealed and a statement of relief sought. Whereas the law already stated a requirement that on the same day as filing with the State Records Committee executive secretary, the appellant should also serve a copy of the appeal on the governmental entity, the amended law makes a parallel requirement for the governmental entity to serve a copy of the appeal on the requester or interested party if a governmental entity is challenging the decision of a local appeals board.

As amended the law allows the executive secretary seven rather than five days to schedule a hearing, and specifies that the hearing shall occur within 16 to 64 days after the date on the notice of appeal, rather than 14 to 52 days as previously required. Upon scheduling a hearing the executive secretary will send a notice of the hearing to the appellant. She will send a copy of the notice of appeal, supporting statement, and a notice of hearing to the members of the records committee, and if the appellant is a requester or interested party, to the chief administrative officer whose access denial is the subject of the appeal as well as to any person who made a business confidentiality claim. If the appellant is a governmental entity, the secretary will send the notice of appeal, supporting statement, and notice of hearing to all persons who participated in the proceedings before the governmental entity's chief administrative officer. Added language that a hearing must be scheduled at "the first regularly scheduled records committee meeting at which there are fewer than 10 appeals scheduled to be heard" allows the records committee executive secretary flexibility in scheduling when the number of requested hearings becomes too great for the regular monthly hearing dates. In certain circumstances, as defined in Administrative Rules, the executive secretary may deny a hearing.

Although language is updated there are no substantial changes to the expressed requirement for the governmental entity to submit a written statement of facts, reasons, and legal authority in support of its position no later than five business days before a hearing. These written statements must be sent to both the executive secretary and to the requester or involved interested party.

Likewise, there are no substantial changes to hearing procedures or to the requirement of the committee to issue an order within seven business days after the hearing. If the records committee fails to issue a decision within 73 (formerly 57) days, that failure is equivalent to denying the appeal. Legislation affirms that State Records Committee appeals are de novo if the appeal involves a governmental entity that does not have a local appeals board. However, if the appeal is of a local appeals board decision, the records committee must review and consider the decision of the local board.

**Judicial review.**

Whereas the law previously allowed any party of a proceeding before the State Records Committee to appeal for review by the district court, the updated law expressly extends the allowance to judicial review of decisions made by a local appeals board. These decisions may be appealed either to the records committee or district court.

As amended the law states that appeals for judicial review must be filed within 30 days after the date of an order or decision. The records committee is a necessary party to a petition for judicial review of a records committee order and a notice of petition for judicial review must be served to the executive secretary in accordance with the Rules of Civil Procedure.

**Utah Code Section 63G-2-404. Judicial review.**

- (1)(a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision.
- (b) The records committee is a necessary party to a petition for judicial review of a records committee order.
- (c) The executive secretary of the records committee shall be served with notice of a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.

Details about a requester's petition in district court have been stricken from the law, leaving the simple statement that a petition for judicial review is governed by the Utah Rules of Civil Procedure. If the complainant seeks judicial review of an order of the State Records Committee, it must include, among other things, a copy of the records committee order which is the basis for appeal. Although the court is to make its decision de novo, evidence presented to the records committee is allowed in court.

**AMENDMENTS TO THE STATE RECORDS COMMITTEE**

Prior to updates, the State Records Committee was made up of seven individuals, including a records management professional, a designee of the Division of State History, a designee of the Governor, two citizens, a representative of the news media, and an elected official. The Legislature has replaced the elected official with a person representing political subdivisions as recommended by the Utah League of Cities and Towns.



**Utah Code Section 63G-2-501. State Records Committee created...**

(1) There is created the State Records Committee within the Department of Administrative services to consist of the following seven individuals:

- (a) an individual in the private sector whose profession requires the individual to create or manage records that if created by a governmental entity would be private or controlled;
- (b) the director of the Division of State History or the director's designee;
- (c) the governor or the governor's designee;
- (d) two citizen members;
- (e) one person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and
- (f) one individual representing the news media.

In addition to and apart from hearing appeals of records access denials associated with records requests, House bill 338 added an additional duty for the records committee. The committee is newly assigned to determine records access disputes submitted by the State Auditor. These disputes are disagreements between the State Auditor and a governmental entity which is the subject of an audit performed by the State Auditor about whether or not the State Auditor may release a record. Such a record would be one that the State Auditor acquired in the course of an audit and which the governmental entity claims is not a public record under GRAMA. The State Records Committee will make a determination of whether the State Auditor may or may not release the disputed record as part of an audit report.

**AMENDMENTS TO APPLICABILITY TO POLITICAL SUBDIVISIONS**

Political subdivisions may adopt ordinances or policies that relate to certain records management and access practices and that are applicable throughout their jurisdictions. Prior to updates, the law authorized political subdivisions to establish a separate appeals process. As set forth, this appeals process could include an appeals board comprised of either the governing body of the political subdivision or of a separate appeals board comprised of members of the governing body and the public, but appointed by the governing body. Local ordinances also designated the chief administrative officer to hear appeals. Although by agreement between the political subdivision and the requester, an additional level of administrative review could be requested of the State Records Committee, appeals of decisions of local boards were appealed in district court.

The amended law completely changes the nature of local appeals boards. The first step of appeal for a requester or interested party is still to the political subdivision's chief administrative officer. But, political subdivisions may establish appeals boards as the next level of appeal. An



appeals board established by a political subdivision must be composed of three members. One must be an employee of the political subdivision. One must be a member of the public, and the last must be a member of the public who has “professional experience with requesting or managing records.”

**Utah Code Section 63G-2-701. Applicability to political subdivisions...**

- (5) (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.
- (b) A political subdivision’s appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.
- (c) (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.
- (ii) An appeals board established by a political subdivision shall be composed of three members:
  - (A) one of whom shall be an employee of the political subdivision; and
  - (B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.
- (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.
- (iv) If a political subdivision does not establish an appeals board, the political subdivision’s appeals process shall provide for an appeal of a chief administrative officer’s decision to the records committee, as provided in Section 63G-2-403.

If a political subdivision establishes an appeals board, then any appeal of a decision of the chief administrative officer must be made to the appeals board. If a political subdivision does not establish an appeals board, the chief administrative officer’s denial affirmation may be appealed to the State Records Committee or in the district court. If a political subdivision is unhappy with the decision of its appeals board, it can also appeal the board’s decision either with the records committee or in district court. Any person who is a party in a State Records Committee hearing has the right to further appeal in the district court.

## UTAH PUBLIC NOTICE WEBSITE AMENDMENTS

In addition to changes to GRAMA, House Bill 117 eliminated the one million dollar budget threshold and now requires all municipalities, special districts, and local districts to post notice of their meetings on the Utah Public Notice Website. Previously posting was encouraged but not required. Bodies with limited resources may request assistance from the Utah State Archives.

**Utah Code Section 52-4-202. Public notice of meetings..**

...(c) A public body whose limited resources make compliance with Subsection (3)(a)(i)(B) difficult may request the Division of Archives and Records Service, created in Section 63A-12-101, to provide technical assistance to help the public body in its effort to comply.